

**Executive Summary – Enforcement Matter – Case No. 42574**  
**Triumph Structures - East Texas, Inc.**  
**RN101059459**  
**Docket No. 2011-1713-IHW-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

IHW

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Triumph Structures East Texas, 703 Old Gladewater Highway, Kilgore, Gregg County

**Type of Operation:**

Machine shop

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** February 3, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$10,470

**Amount Deferred for Expedited Settlement:** \$2,094

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$4,188

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$4,188

Name of SEP: Texas Association of Resource Conservation and Development Areas,  
Inc. ("RC&D") - Clean School Buses

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

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**Triumph Structures - East Texas, Inc.**  
**RN101059459**  
**Docket No. 2011-1713-IHW-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** September 1, 2011  
**Date(s) of NOE(s):** September 2, 2011

***Violation Information***

1. Failed to provide a demonstration of continuous financial assurance for closure, post closure, or corrective action for the Facility [30 TEX. ADMIN. CODE § 37.111 and Hazardous Waste Permit No. 50394, Permit Provision VII.C.1].
2. Failed to provide liability coverage for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the Facility [30 TEX. ADMIN. CODE § 37.404(a) and 40 CODE OF FEDERAL REGULATIONS § 264.147].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)
2. The Order will also require the Respondent to:
  - a. Within 30 days:
    - i. Submit documentation that demonstrates acceptable financial assurance for closure, post closure or corrective action for the Facility has been provided; and
    - ii. Submit documentation that demonstrates acceptable liability coverage for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the Facility has been provided.
  - b. Within 45 days, submit written certification demonstrating compliance.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 42574**  
**Triumph Structures - East Texas, Inc.**  
**RN101059459**  
**Docket No. 2011-1713-IHW-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Philip Aldridge, Enforcement Division,  
Enforcement Team 7, MC 128, (512) 239-0855; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division,  
MC 219, (512) 239-3565

**Respondent:** Bryan Johnston, President, Triumph Structures - East Texas, Inc., P.O.  
Box 1209, Kilgore, Texas 75663-1209

**Respondent's Attorney:** N/A



**Attachment A**  
**Docket Number: 2011-1713-IHW-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Triumph Structures – East Texas, Inc.</b>
<b>Payable Penalty Amount:</b>	<b>Eight Thousand Three Hundred Seventy-Six Dollars (\$8,376)</b>
<b>SEP Amount:</b>	<b>Four Thousand One Hundred Eighty-Eight Dollars (\$4,188)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. (“RC&amp;D”) - Clean School Buses</b>
<b>Location of SEP:</b>	<b>Texas Air Quality Control Region 022 - Shreveport - Texarkana - Tyler</b>

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to aid local school districts, area transit agencies, and local governments in need of funding assistance to pay for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. The funds will be disbursed on a needs-rated basis, using non-attainment area status, condition of buses, and economic status of the recipient as possible rating factors if competition for the funds exists. To maximize funds, retrofitting will take priority over replacement of buses. Older buses deemed not suitable for retrofitting will be permanently retired and sold only for scrap.

Acceptable retrofit technologies include particulate matter traps, diesel particulate matter filters, nitrogen oxides (NO<sub>x</sub>) reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by the United States Environmental Protection Agency (“EPA”) or the California Air

Triumph Structures - East Texas, Inc.  
Agreed Order - Attachment A

Resources Board. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by reducing particulate matter and hydrocarbon emissions from buses, to meet the new, more stringent emissions standards introduced by the EPA which will be phased in between 2007 and 2010.

**C. Minimum Expenditure**

The Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
Attention: Ken Awtrey  
P.O. Box 635067  
Nacogdoches, Texas 75961

**3. Records and Reporting**

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.







# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	6-Sep-2011	<b>Screening</b>	15-Sep-2011	<b>EPA Due</b>	
	<b>PCW</b>	21-Sep-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Triumph Structures - East Texas, Inc.		
<b>Reg. Ent. Ref. No.</b>	RN101059459		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	42574	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-1713-IHW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Industrial and Hazardous Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Philip Aldridge
		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,000
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## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	2.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$20
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Notes: Enhancement for one NOV with dissimilar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$10,876  
Approx. Cost of Compliance: \$47,000  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,020
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	926.5%	<b>Adjustment</b>	\$9,450
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with the violation.

<b>Final Penalty Amount</b>	\$10,470
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$10,470
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$2,094
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$8,376
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Screening Date 15-Sep-2011

Docket No. 2011-1713-IHW-E

PCW

Respondent Triumph Structures - East Texas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 42574

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101059459

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Philip Aldridge

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 2%

Screening Date 15-Sep-2011

Docket No. 2011-1713-IHW-E

PCW

Respondent Triumph Structures - East Texas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 42574

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101059459

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Philip Aldridge

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 37.111 and 37.404(a) and Hazardous Waste Permit No. 50394, Permit Provision VII.C.1. and 40 Code of Federal Regulations § 264.147

Violation Description

Failed to provide a demonstration of continuous financial assurance for closure, post closure, or corrective action for the Facility. Also, failed to provide liability coverage for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the Facility.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification			
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

14 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$1,000

One annual event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$10,876

Violation Final Penalty Total \$10,470

This violation Final Assessed Penalty (adjusted for limits) \$10,470

# Economic Benefit Worksheet

**Respondent** Triumph Structures - East Texas, Inc.  
**Case ID No.** 42574  
**Reg. Ent. Reference No.** RN101059459  
**Media** Industrial and Hazardous Waste  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$38,000	1-Sep-2011	1-Jun-2012	0.75	\$1,426	n/a	\$1,426

Notes for DELAYED costs

Estimated cost to provide financial assurance and third party liability coverage at the Facility. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$9,000	30-Jun-2011	1-Sep-2011	1.00	\$450	\$9,000	\$9,450
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to provide financial assurance and third party liability coverage at the Facility. The Date Required is the date the coverage was due and the Final Date is the investigation date.

Approx. Cost of Compliance

\$47,000

TOTAL

\$10,876

## Compliance History

Customer/Respondent/Owner-Operator: CN603644527 Triumph Structures - East Texas, Inc. Classification: AVERAGE Rating: 1.50

Regulated Entity: RN101059459 Triumph Structures - East Texas, Inc. Classification: AVERAGE Site Rating: 1.50

ID Number(s):

INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXD007340342
INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	33042
INDUSTRIAL AND HAZARDOUS WASTE	PERMIT	50394
STORMWATER	PERMIT	TXR05R424
IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	33042

Location: 703 OLD GLADEWATER HWY, KILGORE, TX, 75662

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: September 15, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 15, 2006 to September 15, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Philip Aldridge Phone: (512) 239-0855

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 01/04/2010 (784019)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 01/01/2010 (784019)CN603644527

Self Report? NO Classification: Moderate

Citation: 40 CFR Chapter 279, SubChapter I, PT 279, SubPT C 279.22

Description: Failure to develop an SPCC Plan.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
TRIUMPH STRUCTURES - EAST  
TEXAS, INC.  
RN101059459**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-1713-IHW-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Triumph Structures - East Texas, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a machine shop at 703 Old Gladewater Highway in Kilgore, Gregg County, Texas (the "Facility").
2. The Facility involves or involved the management of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 7, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Ten Thousand Four Hundred Seventy Dollars (\$10,470) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand One Hundred Eighty-Eight Dollars (\$4,188) of the administrative penalty and Two Thousand Ninety-Four Dollars (\$2,094) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Four Thousand One Hundred Eighty-Eight Dollars (\$4,188) shall be conditionally offset by Respondent's completion of a Supplemental Environmental Project ("SEP").
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide a demonstration of continuous financial assurance for closure, post closure, or corrective action for the Facility, in violation of 30 TEX. ADMIN. CODE § 37.111 and Hazardous Waste Permit No. 50394, Permit Provision VII.C.1., as documented during a record review conducted on September 1, 2011.
2. Failed to provide liability coverage for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the Facility, in violation of 30 TEX. ADMIN. CODE § 37.404(a) and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 264.147, as documented during a record review conducted on September 1, 2011.



### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Triumph Structures - East Texas, Inc., Docket No. 2011-1713-IHW-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Four Thousand One Hundred Eighty-Eight Dollars (\$4,188) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that the Respondent shall undertake the following technical requirements:

a. Within 30 days after the effective date of this Agreed Order:

- i. Submit documentation that demonstrates acceptable financial assurance for closure, post closure or corrective action for the Facility has been provided, in accordance with 30 TEX. ADMIN. CODE § 37.111; and
- ii. Submit documentation that demonstrates acceptable liability coverage for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the Facility has been provided, in accordance with 30 TEX. ADMIN. CODE § 37.404 and 40 CFR § 264.147 to:

Financial Assurance Unit, MC-184  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a.i. and 3.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

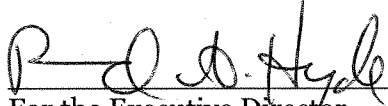
4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director


2/22/12  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

12/20/11  
Date

Bryan Johnston  
Name (Printed or typed)  
Authorized Representative of  
Triumph Structures - East Texas, Inc.

PRESIDENT  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

**Attachment A**  
**Docket Number: 2011-1713-IHW-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Triumph Structures – East Texas, Inc.</b>
<b>Payable Penalty Amount:</b>	<b>Eight Thousand Three Hundred Seventy-Six Dollars (\$8,376)</b>
<b>SEP Amount:</b>	<b>Four Thousand One Hundred Eighty-Eight Dollars (\$4,188)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. (“RC&amp;D”) - Clean School Buses</b>
<b>Location of SEP:</b>	<b>Texas Air Quality Control Region 022 - Shreveport - Texarkana - Tyler</b>

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative penalty amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to aid local school districts, area transit agencies, and local governments in need of funding assistance to pay for the cost of the following activities to reduce emissions: 1) replacing older diesel buses with alternative fuelled or clean diesel buses; or 2) retrofitting older diesel buses with new, cleaner technology. The funds will be disbursed on a needs-rated basis, using non-attainment area status, condition of buses, and economic status of the recipient as possible rating factors if competition for the funds exists. To maximize funds, retrofitting will take priority over replacement of buses. Older buses deemed not suitable for retrofitting will be permanently retired and sold only for scrap.

Acceptable retrofit technologies include particulate matter traps, diesel particulate matter filters, nitrogen oxides (NO<sub>x</sub>) reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by the United States Environmental Protection Agency (“EPA”) or the California Air

Triumph Structures - East Texas, Inc.  
Agreed Order - Attachment A

Resources Board. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by reducing particulate matter and hydrocarbon emissions from buses, to meet the new, more stringent emissions standards introduced by the EPA which will be phased in between 2007 and 2010.

**C. Minimum Expenditure**

The Respondent shall contribute at least the SEP amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
Attention: Ken Awtrey  
P.O. Box 635067  
Nacogdoches, Texas 75961

**3. Records and Reporting**

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the Enforcement Division SEP Coordinator at the address in Section 3 above.

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.